

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3154 of 1986

Date of decision: 23-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI MULJIBHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

M/S TRIVEDI & GUPTA for Petitioner
Mr. Gharania for Respondent No. 1
MR SUNIL K SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/12/96

ORAL JUDGEMENT

The petitioner, a retired employee of the Gujarat Maritime Board, filed this petition challenging the order made by the Board on 30th August, 1983 under which respondent No.3 was given promotion to the post of Deputy Secretary. The petitioner made grievance that his case for promotion was not considered and that respondent No.3 was not possessing the requisite qualification for promotion. Reply to the special civil application has been filed by the Maritime Board and the claim of the petitioner contested.

2. Learned counsel for the petitioner made threefold submissions in the present case. Firstly, it is contended that the case of the petitioner was not considered for promotion to the post of Deputy Secretary while promoting respondent No.3. It has next been contended that the Rules framed by the Board for making promotion to the post of Deputy Secretary could not have been given effect to as the first Regulations are to be framed by the Government. Reliance in this respect has been made to the provisions of section 113 of the Gujarat Maritime Board Act, 1981. Lastly it is contended by the learned counsel for the petitioner that promotion should have been made in accordance with the notification dated 18th November, 1964.

3. On the other hand counsel for the Maritime Board contended that the petitioner's case was considered for promotion to the post of Deputy Secretary, but he was not adjudged suitable for the said post and as such he was not given promotion. The Board was competent to frame regulation regarding appointment and promotion to be made on the post in the Board. The regulation framed for promotion to the post of Deputy Secretary was within the competence of the Board. It has next been contended that pending framing of the first regulation by the Government the Board was competent to frame regulation; and reference has been made to the document at annexure -B filed by the petitioner along with special civil application. The counsel for the State supported the argument made by the learned counsel for the Board. He further submitted that the Board was within its competence to frame rules pending preparation of first regulation by the Government.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is true that section 113 of the Maritime Board Act, 1981 provides that the first regulation regarding appointment, promotion and other service conditions of the employees of the Board has to be framed by the

Government. The Maritime Board has been set up with effect from 5-4-1982. As per section 110 of the Act, 1951, the Board has to make regulations on various matters pertaining to establishment, finance, administration, etc., Section 113 of the Act stipulates that the first regulations under the Act shall be made by the State Government. The State Government may take reasonable time to frame first regulations, and to avoid any difficulty in the smooth and normal function of the Board, the Government has issued circular dated 16-4-1982, reference to which has been made in annexure-B directing that until first regulations to be made by the Government are framed and notified, the existing rules, regulations, circulars, instructions, etc., pertaining to finance, administration, establishment and all other matters as applicable to the State Government will be applicable to the Board also. It is not in dispute that the post of Deputy Secretary has been created in the Board for the first time in the year 1984. Learned counsel for the petitioner has failed to point out any rule, circular, or resolution of the Government regulating the appointment and promotion to the post of Deputy Secretary in the State. The counsel for the petitioner has made reference to the Government Notification dated 18th November, 1964. These are rules framed under Article 309 of the Constitution of India for gazetted posts in the Ports Organisation in the Public Works Department. In these rules I do not find any post of Deputy Secretary. The contention of the learned counsel for the petitioner is that the post of Traffic Manager under the aforesaid Rules is equivalent in status and pay-scale of Deputy Secretary and as such these rules should have been followed by the respondent Board for making promotion to the post of Deputy Secretary. There is apparent fallacy in the contention of the learned counsel for the petitioner. There may be thousands of posts in the Government and the Board which may have equal pay-scales. But the court cannot be oblivious of the fact that post of Traffic Manager, by name itself, is a post different from that of Deputy Secretary. There would have been some substance in the contention of the learned counsel for the petitioner in case the post of Deputy Secretary would have been provided in the aforesaid rules, which is not the case here.

5. The post of Deputy Secretary has been created pending preparation of the first regulation by the State Government, and as per circular of the Government dated 16-4-1984 the rules of the Government already in existence could have been followed and in absence of the rules of the Government for the post concerned, I fail to

see any difficulty or lack of competence of the Board to frame tentative regulations for making appointment on the post of Deputy Secretary. What exactly has been done in the present case is that the Board passed resolution No.18 on 26th May, 1982 and framed Rules called Deputy Secretary (Recruitment) Rules, 1982. Appointment to the post of Deputy Secretary is provided to be made by selection of persons of proved merit and efficiency from amongst officers working in the Gujarat Maritime Board in Class II cadre in the administrative wing (i.e. P.O./ A.P.O./ T.O./ L.W.O./ S.O./ Administrative Officer having administrative experience of about seven years and knowledge of secretariat work). Other modes have also been provided for recruitment to the post, including by direct recruitment. For direct recruitment minimum qualification prescribed was First Class Degree in Arts, Science, Commerce or Law of a recognised University with five years experience of administration and Secretariat work in any engineering concern. The counsel for the State has not disputed the action of the respondent Board in framing rules for recruitment to the post of Deputy Secretary, pending preparation of first Regulation by the State Government. The Board was in need of post of Deputy Secretary for its Secretariat work and as such it was within its competence to create the post. To the extent of creation of post of Deputy Secretary, learned counsel for the petitioner also has not made any grievance.

6. The rules regulating recruitment to the post of Deputy Secretary have been given effect to. The petitioner has only the right of consideration for promotion and that right has not been denied. The petitioner's case for promotion was considered twice. But on both the occasions he did not stand to the test of merits. The criterion for promotion is proved merit and efficiency. Though the petitioner may be senior to respondent No.3, as the criterion for promotion is proved merit and efficiency, he could have been superseded by a more meritorious person, may be junior to him. It is not the case that the petitioner's case was not considered.

7. The petitioner has taken all chances of selection for promotion to the post of Deputy Secretary. Respondent No.3 was given promotion to the post of Deputy Secretary on 30-8-1983, and the petitioner has not challenged the same immediately. The petitioner retired from service on 31st March, 1984 and only after retirement the petitioner has chosen to approach this court by filing this petition on 17-6-1986. Thus the promotion of respondent No.3 has been challenged by the

petitioner after about 2 years and 10 months. Not only this, but the petitioner has challenged that promotion after 2 years and 3 months of his retirement. This delay on the part of the petitioner to approach this court against the order of promotion of respondent No.3 is also fatal to his claim.

8. In the result this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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